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Supreme Court, U.S.
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No. 89-1435

IN THE

# Supreme Court of the United States

AMERICAN RAILWAY AND AIRWAY SUPERVISORS ASSOCIATION, *ET AL.*
*Petitioners,*

v.

SOO LINE RAILROAD COMPANY
*Respondent.*

# RESPONDENT'S BRIEF IN OPPOSITION

PATRICK J. McPARTLAND
JOHN BARRINGTON McGRATH, JR.*
SOO LINE RAILROAD COMPANY
100 Soo Line Building
P.O. Box 530
Minneapolis, MN 55440
(612) 347-8284
**Counsel of Record*

Date: April 6, 1990

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## QUESTIONS PRESENTED

1. Whether under the Railway Labor Act (RLA), particularly 45 USC § 152 Third, Soo Line Railroad Company (Soo) has a right to decline to become part of national, industry-wide bargaining leading to a national health and welfare agreement wherein other carriers in the railroad industry are represented by a negotiating committee of which Soo is not a member, when prior to national bargaining Soo announced its intention to represent itself locally to negotiate its own health and welfare agreements with its employees, and to not take part in national handling.

2. Whether designation of a national negotiating committee by Soo in previous rounds of collective bargaining to represent it in negotiating national health and welfare agreements requires it to bargain nationally on an industry-wide basis to secure permission from the unions to represent itself in negotiating local health and welfare agreements for Soo employees in a new round of collective bargaining.

## LIST OF PARTIES

The caption and Appendix E of the petition for certoriari properly lists the parties. Pursuant to Supreme Court Rule 28.1, respondent's parent companies, subsidiaries and affiliates are Soo Line Corporation, Canadian Pacific Limited, and Indiana Harbor Belt Terminal Company.

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*Petitioners,*

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SOO LINE RAILROAD COMPANY
*Respondent.*

# RESPONDENT'S BRIEF IN OPPOSITION

## RESPONDENT'S BRIEF IN OPPOSITION

Respondent Soo Line Railroad Company ("Soo") submits this brief in opposition to the petition for certiorari.

## PRELIMINARY STATEMENT

The question presented here is whether Soo acted in accordance with the Railway Labor Act (RLA) in declining to designate the National Carriers Conference Committee (NCCC) as its representative in bargaining with the petitioning unions for the purpose of negotiating changes in the national health and welfare agreement, announcing instead, prior to the onset of such national bargaining, that Soo desired to represent itself in local negotiations with union representatives of its own employees for the purpose

of entering into health and welfare agreements between Soo and its employees. Petitioners have consistently taken the position that Soo could not enter into local bargaining without first obtaining their agreement to do so at the national bargaining table. Thus, the petitioning unions would have Soo bargain nationally with them, during the course of national bargaining with the NCCC, to secure their agreement to negotiate locally. Soo is not a member of the NCCC, but under petitioner's theory would have to sit at the national bargaining table to bargain over its decision to negotiate locally.

The United States Court of Appeals for the Eighth Circuit in *American Railway and Airway Supervisors Association, et al. v. Soo Line Railroad Company*, 891 F.2d 675 (1989) affirmed the decision of the United States District Court for the District of Minnesota, reported at 690 F.Supp. 802 (1988), in holding that Soo has no duty to give notice under the RLA to negotiate its withdrawal from national bargaining; has a statutory right to designate its own representative to bargain locally; and further, has no obligation to accept national bargaining and is not bound by national negotiations in which it chooses not to participate.

While the Eighth Circuit's opinion is recent, filed December 13, 1989, at least four courts have since reached the same conclusion relying on the Eighth Circuit rationale in the instant case.

The Sixth Circuit in *United Transportation Union v. Grand Trunk Western RR*, 6th Cir., No. 89-1523 (decided and filed February 21, 1990), attached as Appendix A, cited without discussion on page 9 of the certiorari petition, upheld the decision of the District Court for the Eastern District of Michigan, reported at 712 F.Supp. 107 (1989),

and applied the reasoning of the Eighth Circuit in the instant case holding that under Section 2 Third of the RLA, 45 U.S.C. § 152 Third[1], a railroad cannot be compelled to bargain nationally where it opts for individual, local bargaining before the start of negotiations, and to argue to the contrary ignores the statutory right of each party to designate a representative with whom the other party's representative must negotiate.

More recent district court decisions have followed Eighth Circuit and Sixth Circuit rationale. *United Transportation Union v. Chicago & Illinois Midland Ry.* C.D. Ill. No. 89-3014 (filed March 6, 1990), attached as Appendix B; *United Transportation Union v. Illinois Central RR*, N.D. Ill. No. 88-C-9607 filed February 28, 1990), attached as Appendix C; *United Transportation Union v. Duluth, Mesabe & Iron Range Ry.*, D. Minn. Civil File No. 5-88-0178 (filed December 28, 1989), attached as Appendix D.

Thus, all of the recent case authority from the lower courts in other circuits on these issues have followed the Eighth Circuit holding in the instant petition.

## RESTATEMENT OF THE CASE

### A.

### The Legal Framework Governing Soo's Relationship With Its Employees.

At the risk of being too elementary, a brief description of the applicable provisions of the Railway Labor Act may assist the Court in focusing on the genesis of this litigation. Soo's relations with its employees are governed by the Railway Labor Act, 45 U.S.C. § 151 *et seq.* The Act

[1]Relevant statutes are reprinted in Appendix E hereto.

imposes upon both the carrier and its employees the obligation to make and maintain agreements through good faith bargaining. 45 U.S.C. § 152 First. Under the Act, either a railroad or its employees may initiate negotiations with respect to changes in "working conditions" by serving upon the other party a notice pursuant to Section 6 of the Act, 45 U.S.C. § 156, describing the changes sought. Upon service of a Section 6 notice, the parties confer in an attempt to resolve any disputed contractual changes in the notice. If the issues are not resolved in such conferences, either party is permitted to request the services of the National Mediation Board who will assist the parties in reaching an agreement. 45 U.S.C. § 156.

Under the RLA, both employees and carriers are guaranteed the right to select their own representatives to resolve disputes over proposed changes in existing contracts through collective bargaining. Section 2 Second, of the RLA, 45 U.S.C. § 152 Second, provides that "[a]ll disputes between a carrier . . . and its . . . employees shall be considered and, if possible, decided, with all expedition, in conference *between representatives designated and authorized so to confer, respectively, by the carrier . . . and by the employees thereof* interested in the dispute." (Emphasis added.)

The Act further defines "representative" as "any person or persons, labor union, organization, or corporation *designated either by a carrier* . . . or by its . . . employees, *to act for it or them.*" 45 U.S.C. § 151 Sixth. (Emphasis added.)

More specifically, Soo's right, and for that matter the right of petitioners, to select its own representative for such negotiations without intereference is preserved by Section 2 Third of the RLA:

> Representatives, for the purposes of this Act shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives. . . . 45 U.S.C. § 152 Third.

Certain classes and crafts of Soo employees are members of, and are represented by, labor organizations in their negotiations with Soo. These negotiations are generally conducted by a General Chairman of each labor organization elected by the employee members of that union. Periodically, some of the General Chairmen defer to the national or international labor organization with which they are affiliated to bargain on an industry-wide basis. Except in those cases where the national or international labor organizations participate in negotiations, either with a specific railroad or on an industry-wide basis, the General Chairmen bargain for their members with Soo directly. (J.A. 134)[2]

The railroads may similarly elect to bargain directly on their own behalf or to be represented by a multi-railroad bargaining agent. This latter negotiation format, which has become known as "national handling," enables a number of railroads and their employees to reach a single agreement which then applies to all of the participants. When Soo has elected to participate in national handling, it has done so by giving a power of attorney to the National Carriers' Conference Committee ("NCCC") to negotiate on its behalf with respect to specific issues. (J.A. 136)

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[2]Reference to the Joint Appendix filed in Eighth Circuit No. 88-5350 in the instant case.

A railroad's designation of the NCCC as its bargaining representative with respect to a certain issue or issues, however, neither obligates it to participate in national handling with respect to other issues nor automatically authorizes the NCCC to represent it in subsequent national negotiations. Rather, for every set of negotiations, each railroad desiring to participate in national handling must specifically grant the NCCC power to act as its representative with respect to particular issues. (J.A. 137)

**B.**

**The Genesis of the Current Dispute Over the Negotiation of Health and Welfare Benefits.**

In January, 1984, local unions and General Committees representing Soo's employees each served separate and individual Section 6 notices on Soo seeking to negotiate changes in working conditions, including changes in the health and welfare benefits. In virtually every instance, the notice requested that Soo waive its right to conduct direct negotiations with the unions and requested it to authorize the NCCC to act for it in national bargaining. The notices indicated that, if Soo was not agreeable to such national handling, the locals would participate in a conference directly with Soo itself, as provided by the Railway Labor Act. (J.A. 147-149, 150-151)

Following receipt of these Section 6 notices, Soo advised the unions that it had chosen to bargain locally as its own representative with respect to the proposed changes in its employees' health and welfare benefits and, therefore, would not participate in national handling of these issues. Accordingly, Soo did not give its power of attorney to the

NCCC to negotiate on a national basis with respect to such benefits. (J.A. 149, 150)

When Soo advised the union representatives that it wished to negotiate health and welfare issues directly on its own behalf, the local union representatives conferred collectively with Soo and, in some cases, carried on further negotiations directly with Soo. As a result of these meetings, the company reached agreement with eight of the 19 local unions representing its employees on a Soo self-insured Health Care Plan, Dental Plan, Life Insurance and Accidental Death and Dismemberment Plan, and Early Retirement Major Medical Plan. These plans are now in effect and provide the covered employees with benefits significantly superior to those provided under the present national plans. (J.A. 47-48, 49-50, 51-52) Soo has offered to negotiate agreements with representatives of its other employees, proposing similar terms. (J.A. 152-154)

Soo invoked the services of National Mediation Board when unions refused to participate in local negotiations for the asserted reason that this litigation was pending. Notwithstanding this stalemate, the Company has continued coverage under the national policies for members of these unions and of the other unions with whom agreement has not been reached, until the parties reach agreement over Soo's health and welfare benefits or the parties exhaust their mandatory bargaining obligations under the RLA and are free to engage in self-help including the unilateral implementation by Soo of its health and welfare program. (J.A. 154-155)

## REASONS FOR DENYING THE WRIT

### A.

### The Court Below Correctly Applied Well-Settled Law That an Employer Under the RLA, as in Other Industries, May Withdraw From National Bargaining by Announcing Prior Thereto That it Intends to Bargain Locally With Representatives of its Own Employees.

The decisions of the courts below were predicated in large measure on this Court's opinion in *Bonanno Linen Service v. NLRB*, 454 U.S. 404 (1982), which was decided some fifteen years *after* the *dicta* so heavily relied on by petitioners in *Brotherhood of Railroad Trainmen v. Atlantic Coastline RR*, 383 F.2d 225 (D.C. Cir. 1967), *cert. denied*, 389 U.S. 1047 (1968). In *Bonanno*, this Court addressed the issue of withdrawal from multi-employer bargaining units under the National Labor Relations Act and reaffirmed the public policy interest against unwarranted restrictions on withdrawal from national bargaining. The Court noted and specifically approved the NLRB's guidelines that permit a party to decline to participate in an established multi-employer bargaining group of which it has been a member, so long as it acts before negotiations have commenced. Those guidelines neither force employers into multi-employer units nor erect barriers to withdraw prior to bargaining. 454 U.S. at 410-411, 412. The rationale of *Bonanno* has also been applied in all of the Railway Labor Act cases decided since the Eighth Circuit decision below, which are reproduced in the appendices to this brief.

Nothing in the Railway Labor Act indicates that either a railroad or its employees may be required to accept national handling against their will. Indeed in *Atlantic Coast Line*

the D.C. Circuit explicitly upheld a union's statutory right to resist national handling and reversed a trial court's decision that had required the union to accept such negotiations against its will. The Court of Appeals rejected this conclusion, stating that "[t]he Railway Labor Act does *not* universally and categorically compel a party to a dispute to accept national handling over its protest." 383 F.2d at 229 (Emphasis added).

By way of *dicta,* however, and without citation to either any prior judicial precedent or any provision of the RLA, the D.C. Circuit gratuitously and in a highly conclusory fashion opined that, under certain circumstances, national handling might be obligatory: "Whether it [national handling] is . . . obligatory will depend on an issue-by-issue evaluation of the practical appropriateness of mass bargaining on that point and of the historical experience in handling any similar national movements." *Id.* at 229. On the strength of this *dicta,* petitioners claim that, because Soo has in the past voluntarily participated in national handling with respect to health and welfare benefits, it is automatically bound to do so in the future. Not only are petitioners attempting to stretch *dicta* into law, they are trying to stretch the meaning of *dicta* itself. Stretching mere *dicta* to such lengths would not only eliminate the statutory right that both railroads and their employees enjoy to choose freely their own bargaining representatives to bargain either nationally or locally, but it would also be contrary to sound labor relations policy. Moreover, such a rule would require the courts to evaluate the relative benefits and costs of particular bargaining procedures and to prescribe the most efficient method for negotiating a specific substantive issue, exercises the courts are ill-equipped to perform.

Any attempt to restrict the right of an employer or a union to select its own negotiating representative on the basis of the way negotiations had been conducted in the past is clearly bad labor policy. While national handling of labor disputes may be beneficial in helping to achieve peaceful settlements where both an employer and the representative of its employees consent to such handling, the use of this device would be discouraged if either an employer or a union could be bound perpetually to such an arrangement merely by virtue of having participated in national handling in the past. The resulting disincentive to ever agree to national handling would be particularly severe if rail carriers could be forced to participate in such multi-railroad bargaining where, as here, they have explicitly declined such participation *long before* bargaining in fact commenced. No one would benefit from such a restriction of bargaining choices — not the railroads, not the unions, and particularly not the public.

Clearly the *dicta* relied on by petitioners in *Atlantic Coast Line*, was not a matter for decision, since the circumstances under which railroads or their employees could be deprived of their right to decline to engage in national handling was not an issue before the court. Indeed, in that case the court explicitly upheld the right of the union to resist participation in national handling. Subsequent cases under the RLA that have noted the D.C. Circuit's *dicta* and have forced a party to participate in national handling have all involved situations where the party had waived its statutory right to insist on individual local negotiations and not situations, as in the instant case, where a carrier notified its unions in a timely fashion that it would represent itself in local negotiations over newly-served Section 6 notices.

For example, in *Chicago, Burlington & Quincy Railroad v. Railway Employees' Dept., AFL-CIO*, 301 F.Supp. 603 (D.D.C. 1969) (*"CB&Q"*), the court required rail unions to continue to participate in national handling. However, in *CB&Q* national negotiations had already commenced, and the unions were already participating in those national negotiations with CB&Q's national, multi-railroad agent. Only in the midst of those negotiations did the union attempt to seek a better deal by trying to force the CB&Q to bargain with it individually. The district court concluded that: "Having recognized . . . the national representative of the carriers, the unions are not now free to compel the Burlington Railroad to bargain with them on a unilateral basis and thus break up the established multi-employer bargaining unit." *Id.* at 607. This holding is no more than an application of the general rule, as described by the Court in *Bonanno Linen,* that a party to multi-employer bargaining may not generally withdraw after negotiations have commenced.

Similarly, all of the remaining precedents in the District of Columbia Circuit relied on by petitioners and citing the earlier *dicta* have involved situations, unlike the one in this case, in which negotiations had already commenced on a national level, and one of the parties took actions inconsistent with such handling. In *International Association of Machinists and Aerospace Workers v. National Railway Labor Conference,* 310 F.Supp. 905 (D.D.C. 1970), the court held only that, once negotiations had begun on a national level, a union could not attempt to coerce individual agreements by striking selectively fewer than all the railroads participating in such bargaining even after national negotiations had reached an impasse. *Id.* at 912-913. In *Delaware & Hudson Ry. Co. v. United Transporta-*

*tion Union,* 450 F.2d 603 (D.C. Cir. 1971) the court held that a union *could* selectively strike fewer than all the members of a multi-railroad bargaining group upon reaching an impasse in national negotiations so long as the strike was not intended to coerce individual agreements, but was aimed at a national agreement.

The gratuitous remarks in the petition asserting that the denial of certiorari would increase labor strife, would destabilize existing national agreements and would impede negotiations in the future leading to a disruption in commerce, are wholly unfounded and without support in the railroad industry or other industries, for that matter. As the Court well knows, the railroad industry has been deregulated after passage of the Staggers Rail Act of 1980. In that legislation, the Congress phased out collective rate making and required railroad rates to be individually set and further contemplated that railroads would have greater individual freedom to determine their own freight charge and cost structures, including significant labor costs. Public Law No. 96-448, Section 219, codified at 49 U.S.C. § 10706 (1980). See also, H.Conf. R.Rep. No. 96-1430, 96th Cong., 2d Session, 113-114 (1980), U.S. Code Cong. & Admin. News 1980, p. 3978. Thus, requiring national bargaining would be inconsistent not only with the RLA but with the goals of the Staggers Act since individualized pricing based on carrier specific costs is the cornerstone of the Act. *United Transportation Union v. Grand Trunk Western RR, supra,* 712 F.Supp. 107, 111-112 (E.D. Mich. 1989), *aff'd,* 6th Cir. No. 89-1523 (decided and filed February 21, 1990). The legislative framework in this regard is succinctly stated in *United Transportation Union v. Illinois Central RR,* N.D. 111 No. 88-C-9607 (filed February 28, 1990):

> Prior to the enactment of the Staggers Act, railroads could increase their freight rates collectively. After the Staggers Act went into effect, railroads were required to set their rates individually in order to foster a more competitive environment. To maintain this competitive environment, carriers need greater freedom to determine their own cost structures, especially labor costs. If railroads could be compelled to participate in national negotiations, they would lose much of this freedom. The ability to freely engage in local negotiations is perhaps even more important to a railroad such as Illinois Central, which seeks to obtain labor agreements that are more consistent with its current railroad operations. (Citations omitted.) Apx. p. A-26-27.

Soo and other railroads have been bargaining locally in keeping with that policy. (J.A. 144-147) As a relatively small regional railroad, it is critical for Soo to bargain locally to operate effectively in its competitive environment.

Under the present legislative framework in the RLA and Staggers Act, as well as well-reasoned case authority, the Eighth Circuit decision in the instant petition need not be reviewed.

**B.**

**The Decisions Below are Not in Conflict With Any Other Decisions.**

To respondent's knowledge, all case authority under the RLA since this Court's decision in *Bonanno Linen Service v. NLRB*, 454 U.S. 404 (1982) has uniformly held that an employer under the Railway Labor Act may withdraw from national bargaining by announcing prior to such bargaining that it intends to bargain locally with representa-

tives of its own employees. These decisions are of recent vintage and have already been cited in the preliminary statement of this brief in opposition. They have also been set out in Appendices A, B, C, and D hereto. As stated by the Sixth Circuit in *United Transportation Union v. Grand Truck Western RR*, 6th Cir., No. 89-1523 (decided and filed February 21, 1990), and quoting from the Eighth Circuit decision to which certiorari is here sought:

> We are aware of no decision that construes this duty [to 'exert every reasonable effort to make and maintain agreements,' 45 U.S.C. § 152 First] to obligate the railroad to bargain for a national contract through a national bargaining representative. The unions' argument ignores the statutory right of each party to designate a representative with whom the other party's representative must negotiate. Apx. p. A-3-4.

The *dicta* of the 1967 District of Columbia Circuit *Atlantic Coastline* decision upon which petitioners placed so much stock and the decisions citing that *dicta*, on which petitioners also rely, do not involve *holdings* contrary to the post *Bonanno* cases included in the Appendices to this brief in opposition, as well as the Eighth Circuit decision in this case.

In sum, petitioners cannot point to any direct conflict with the decisions below, and their effort to generate a conflict through the *Atlantic Coastline dicta* is wholly unavailing. Simply stated, *all* of the authority deciding the issues resolved in the district court and the court of appeals below have consistently followed those decisions.

## CONCLUSION

For the reasons set forth above, the Court should deny the Petition for Writ of Certiorari.

Respectfully submitted,

PATRICK J. McPARTLAND
JOHN BARRINGTON McGRATH, JR.*
Soo Line Railroad Company
1000 Soo Line Building
P.O. Box 530
Minneapolis, MN 55440
(612) 347-8284
**Counsel of Record*

Date: April 6, 1990

# APPENDIX

## APPENDIX A

*RECOMMENDED FOR FULL TEXT PUBLICATION*
*See Sixth Circuit Rule 24*

No. 89-1523
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

United Transportation Union,
*Plaintiff-Appellant,*

v.

Grand Trunk Western Railroad Co.,
*Defendant-Appellee.*

On Appeal from the United States District Court for the Eastern District of Michigan.

Decided and Filed February 21, 1990

Before: NELSON and BOGGS, Circuit Judges, and BERTELSMAN, District Judge.*

PER CURIAM. The plaintiff in this case, the United Transportation Union, brought an action for declaratory and injunctive relief seeking to compel the defendant, Grand Trunk Western Railroad Company, to participate in national multi-employer collective bargaining as opposed to individual bargaining. The district court granted summary judgment for the defendant, *United Transp. Union*

*The Honorable William O. Bertelsman, United States District Judge for the Eastern District of Kentucky, sitting by designation.

*v. Grand Trunk W. R.R. Co.*, 712 F.Supp. 107 (E.D. Mich. 1989) (Zatkoff, J.). We agree with the district court's decision, which finds support in a subsequent decision by the Court of Appeals for the Eighth Circuit.

I.

Defendant Grand Trunk, a small Class I railroad, has approximately 943 miles of track in Indiana, Illinois, Michigan, and Ohio. Its employees are represented by the plaintiff union. Although it had engaged in national multi-employer bargaining in the past, Grand Trunk decided not to do so in the round of bargaining scheduled for 1988. On April 4, 1988 — before bargaining began — Grand Trunk notified the union that "the carrier intends to conduct negotiations in connection with this notice on its own behalf. GTW is not authorizing a national conference committee to represent us in these negotiations." This lawsuit followed.

The district court held that nothing in the Railway Labor Act, 45 U.S.C. §§151 *et seq.*, required the railroad to engage in national bargaining. The court observed that the cases upon which the union relied held only that a railroad could not withdraw from national bargaining once it had commenced. *United Transp. Union*, 712 F.Supp. at 111. The court also noted that an argument similar to the union's had been rejected in *American Railway and Airway Supervisors Association v. Soo Line Railroad*, 690 F.Supp. 802 (D. Minn. 1988). That decision has since been affirmed by the Court of Appeals for the Eighth Circuit. *American Ry. and Airway Supervisors Ass'n v. Soo Line R.R.*, 891 F.2d 675 (8th Cir. 1989) (*"Soo Line"*).

II.

In the present appeal the union urges that the railroad must engage in national, multi-employer bargaining if: (1) the issues are practically suited for national bargaining; and (2) such issues have traditionally been resolved through multi-employer bargaining. The union relies on *dicta* to that effect in *Brotherhood of Railroad Trainmen v. Atlantic Coastline Railroad*, 383 F.2d 225 (D.C. Cir. 1967), *cert. denied*, 389 U.S. 1047 (1968).

We find no authority for the union's position in the Railway Labor Act. The Act does, to be sure, require the parties to "exert every reasonable effort to make and maintain agreements," 45 U.S.C. § 152, First, and requires the railroad to negotiate in good faith. *Chicago & N.W. Ry. v. United Transp. Union*, 402 U.S. 570, 574-75 (1971). But the Act expressly preserves each party's right to choose its own bargaining representative:

> "Representatives, for the purposes of this chapter, shall be designated by the respective parties without interference, influence or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives." 45 U.S.C. § 152, Third.

Relying on the latter section, the Eighth Circuit's *Soo Line* opinion rejects an argument identical to that made by the union here:

> "we are aware of no decision that construes this duty to obligate the railroad to bargain for a national contract through a national bargaining representative. The union's argument ignores the statutory right of

each party to designate a representative with whom the other party's representative must negotiate." *Soo Line*, 891 F.2d at 677-78.

A narrow exception to the freedom of choice rule exists "where one of the negotiating parties attempts to withdraw from multi-party bargaining after negotiations have begun." *Soo Line*, 891 F.2d at 678, citing a case under the National Labor Relations Act, *Charles D. Bonanno Linen Service Inc. v. NLRB*, 454 U.S. 404, 410-11 and n.5 (1982). Here, however, the union does not deny that Grand Trunk announced its intention before bargaining began. No court of appeals has compelled national bargaining where a party opted for individual bargaining before the start of negotiations. For us to do so would be to fly in the teeth of the statute.

Accordingly, and for the reasons stated in Judge Zatkoff's opinion, 712 F.Supp. 107, the judgment of the district court is AFFIRMED.

## APPENDIX B

No. 89-3014

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS—
SPRINGFIELD DIVISION

UNITED TRANSPORTATION UNION,
*Plaintiff.*

v.

CHICAGO & ILLINOIS MIDLAND
RAILWAY COMPANY,
*Defendant.*

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OPINION

RICHARD MILLS, District Judge:

At issue is whether the Defendant railroad is required to engage in nationwide, multi-employer collective bargaining or whether the railroad can bargain on its own behalf at the local level. We find that the Chicago & Illinois Midland Railway Company is not required to engage in nationwide handling of the wage and rules proposals that are in dispute.

This cause is before the Court on Defendant's motion to dismiss or in the alternative for summary judgment. Also before the Court is Plaintiff's motion for summary judgment. (As both sides have submitted affidavits and other documents in support of their respective motions, the Court will treat Defendant's motion as a motion for summary judgment.) In addition, Defendant has filed a counterclaim seeking declaratory and injunctive relief.

Thus, Defendant's motion for summary judgment on

Plaintiff's complaint will be allowed and Plaintiff's motion for summary judgment will be denied. Furthermore, summary judgment will be entered in favor of Defendant on its counterclaim.

## I. Facts

Defendant Chicago & Illinois Midland Railway Company (C&IM) is a Class 2 railroad incorporated in Illinois. C&IM owns approximately 97 miles of mainline track and a lesser amount of side track in the five Illinois counties of Christian, Sangamon, Menard, Mason, and Tazewell. The railroad has 177 active employees, 18 of which are represented by the United Transportation Union (UTU). C&IM provides common carrier service by railroad but is primarily engaged in hauling coal.

Plaintiff UTU is an unincorporated association operating as a labor union. UTU represents railroad industry employees throughout the United States and Canada. The crafts represented by UTU are firemen, conductors, brakemen, yardmen, yardmasters, and some engineers. UTU is comprised of three organizational levels: (1) the international; (2) over 300 general committees of adjustment; and (3) approximately 800 locals.

On May 18, 1988, C&IM served bargaining notices pursuant to §6 of the Railway Labor Act, 45 U.S.C. §156. Under §6 of the RLA, a party to a railroad collective bargaining agreement who desires a change in the terms of the agreement must serve written notice of the desired change on the other party to the agreement. UTU served §6 notices on July 25, 1988.

Thereafter, the parties met several times to discuss wage and rules issues. In a meeting on October 13, 1988, UTU

Vice President Cliff Bryant stated that the §6 notices belonged in national handling. No further meetings were held.

Plaintiff filed its complaint on January 18, 1989. The complaint alleges that part of the obligation of the parties under §2 First of the RLA, 45 U.S.C. §152 First, is to handle §6 notices nationally where the historical methodology of handling and practical appropriateness of mass bargaining indicate national handling is appropriate and one of the parties insists on national handling. Thus, Plaintiff requests that the Court grant it declaratory and permanent injunctive relief ordering Defendant to negotiate UTU's July 25, 1988, §6 notice on a national basis. To accomplish this, Plaintiff requests that the Court issue an injunction directing Defendant to give its power of attorney to negotiate to the National Railway Labor Conference.

Defendant filed a counterclaim on March 3, 1989. The counterclaim alleges that Defendant is not required to engage in national handling and further alleges that Plaintiff's attempt to force Defendant to negotiate nationally is a violation of the Railway Labor Act. Defendant seeks a judgment declaring that C&IM has the unilateral right to select its representative for purposes of negotiating §6 notices; that C&IM is not required to bargain over its choice of representative for contract negotiations; that UTU's attempts to force C&IM to negotiate on a national basis violate the Railway Labor Act; and declaring that the refusal of UTU to negotiate directly with C&IM on a local basis violates the Railway Labor Act. C&IM also seeks an injunction requiring UTU to participate in good faith negotiations with C&IM over the terms and conditions of the 1988 §6 notices.

## II. Summary Judgment Standard

Under Fed. R. Civ. P. 56(c), summary judgment should be entered "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Unquestionably, in determining whether a genuine issue of material fact exists, the evidence is to be taken in the light most favorable to the non-moving party. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 158-59 (1970). Nevertheless, the rule is also well established that the mere existence of some factual dispute will not frustrate an otherwise proper summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986). Thus, the "preliminary question for the judge [is] not whether there is literally no evidence, but whether there is any upon which a jury could properly proceed to find a verdict for the party producing it upon whom the *onus of proof is imposed.*" *Id.* at 251 (quoting *Improvement Co. v. Munson*, 14 Wall. 442, 448 (1872)); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Applying this standard, the Court now turns to the case at bar.

## III. — Analysis

Disposition of these cross motions for summary judgment hinges on which of two competing interpretations of a statute the Court accepts. C&IM's relations with its employees are governed by, *inter alia*, the Railway Labor Act, 45 U.S.C. § 151, *et seq.* Under the RLA, a carrier and its employees have the duty to "exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes.

. . ." 45 U.S.C. § 152 First. Either party can begin negotiations to change wage, rules, or working condition agreements by serving a notice pursuant to § 6 of the RLA, 45 U.S.C. § 156, on the other party. The carrier and its employees are then required to confer in an attempt to resolve any dispute arising out of the § 6 notices. Furthermore, both the carrier and its employees have the right to select their own representative to resolve disputes, without interference, influence or coercion by the other party. 45 U.S.C. §§ 152 Second, 151 Sixth, 152 Third.

A.

Plaintiff's Position

Plaintiff asserts that the Railway Labor Act and relevant case law require national handling of certain railway labor disputes. To support this contention Plaintiff relies almost entirely on a line of cases decided by the United States Court of Appeals for the District of Columbia Circuit and the United States District Court for the District of Columbia.

The earliest of the cases on which Plaintiff relies is *Brotherhood of Railroad Trainmen v. Atlantic Coastline R.R.,* 383 F.2d 225 (D.C. Cir. 1967), *cert. denied,* 389 U.S. 1047 (1068). In that case, the parties were involved in a dispute over the makeup of yard and road crews. The plaintiff served identical § 6 notices on approximately 80 carriers. Those carriers, one of which was the defendant, served their own § 6 notices on the plaintiff.

The union and various carriers began to negotiate on a local basis. Although the carriers requested that the dispute be referred to national handling if the local negotiations broke down, the union refused from the outset.

Local negotiations did break down and the parties invoked the services of the National Mediation Board. The carriers requested that mass mediation be scheduled but instead the board docketed each dispute separately.

Subsequently, several carriers, including the Atlantic Coastline R.R., filed suit in the District Court for the District of Columbia seeking declaratory and injunctive relief. The defendants asserted, *inter alia*, that the union breached a statutory obligation by refusing the request for national handling. The district court ultimately held that the RLA authorized the carriers to demand national handling.

The United States Court of Appeals for the District of Columbia Circuit reversed the district court but did so on the basis that the facts of the particular case did not warrant a finding that the carrier could insist on national handling. The Court went on to state, however:

> The Railway Labor Act does not universally and categorically compel a party to a dispute to accept national handling over its protest. Such bargaining is certainly lawful, however. Whether it is also obligatory will depend on an issue-by-issue evaluation of the practical appropriateness of mass bargaining on that point and of the historical experience in handling any similar national movements.

*Id.* at 229. The last quoted sentence is the language on which Plaintiff's entire case is based.

*Atlantic Coastline* has been cited in several other cases from the D.C. Court of Appeals and the District Court for the District of Columbia. *Delaware & Hudson Ry. Co. v. UTU*, 450 F.2d 603 (D.C. Cir. 1971), involved an attempt by 170 carriers to enjoin the union from conducting a selective strike against fewer than all of the carriers. Although

the court found that the union did have the right to conduct selective strikes, the court cited *Atlantic Coastline* for the proposition that national handling may be obligatory.

In *Chicago, Burlington & Quincy R.R. v. Railway Employee's Department,* 301 F. Supp. 603, 607 (D.C.D.C. 1969), the District Court for the District of Columbia also followed *Atlantic Coastline* and held that national handling was required.

*Chicago, Burlington & Quincy* involved a dispute over "contracting out" or the subcontracting of work. The court found that the subject matter of the dispute was one which had been handled, historically, on a multi-employer basis and the issue was not unique to the union's dealing with any specific carrier. *Id.* Thus, the court held that both the practical appropriateness of mass bargaining and the historical experience in handling the issue in the past made national handling of the matter obligatory. *Id.*

In *UTU v. Burlington Northern, Inc.*, 325 F. Supp. 1125, 1131 (D.C.D.C. 1971), the District Court for the District of Columbia again relied on *Atlantic Coastline* in finding that a dispute was subject to obligatory national handling. That case involved a disagreement over whether freight and yard diesel locomotives would be manned with firemen. The court, on the strength of *Atlantic Coastline,* found that negotiations and past agreements concerning the firemen manning dispute indicated a clear acceptance by the parties of national handling. The court further found that the issue was uniquely appropriate for general national standards. Thus, the court held that the historical experience and practical appropriateness of mass bargaining mandated a finding that national handling was obligatory.

The final case on which Plaintiff relies is *General Com-*

*mittee of Adjustment v. Grand Trunk Western R.R. Co.* (E.D. Mich. June 12, 1986). Again the court relied on *Atlantic Coastline* and found that the dispute was subject to national handling.

B.

Defendant's Position

Defendant asserts that it is not required to participate in national handling for three reasons. First, Defendant asserts that the language of the Railway Labor Act itself mandates a finding that national handling is not obligatory. Second, Defendant argues that the analogous National Labor Relations Act has never been interpreted as restricting the right of employers or their employees to decline to participate in multi-employer bargaining. Third, Defendant contends that the cases on which Plaintiff relies are distinguishable because they all involve a situation where one party commences national negotiations and then attempts to withdraw.

Defendant's argument based on the language of the RLA is rather simple. Under the RLA, both employees and carriers are guaranteed the right to select their own representatives to resolve disputes over proposed changes in existing agreements through collective bargaining. 45 U.S.C. §§ 151 Sixth, 152 Second. The Act expressly prohibits either party from attempting to coerce the other in its choice of a bargaining representative. 45 U.S.C. § 152 Third. Nowhere does the Act require that a party must engage in national handling of any dispute. Thus, Defendant asserts, national handling of a dispute is completely voluntary by the parties.

Defendant's second argument is based on case law inter-

preting the National Labor Relations Act. Defendant asserts that national handling under the RLA is similar to multi-employer bargaining under the NLRA. Defendant further asserts that it is well established under the NLRA that "[m]utual consent . . . is a basic ingredient necessary to support the appropriateness of a multi-employer bargaining unit." *Andes Fruit Co.*, 124 N.L.R.B. 781, 783 (1959). Thus, by analogy, Defendant argues that mutual consent is necessary to support national handling under the Railway Labor Act.

As its third attack on Plaintiff's position, Defendant attempts to distinguish the line of cases on which Plaintiff relies. Defendant asserts that the cases cited by Plaintiff are all cases in which a party commenced national handling and then attempted to withdraw and engage in local negotiations or took other action inconsistent with national handling. Defendant asserts that it informed Plaintiff from the outset that it intended to bargain on its own behalf on a local basis and that Plaintiff virtually ignores the only reported case addressing such a situation, *American Railway and Airway Supervisors Association v. Soo Line R.R. Co.*, 690 F. Supp. 802 (D. Minn. 1988).

In *Soo Line*, the railroad notified the unions of its intention to bargain locally on its own behalf before national negotiations began. The district court noted that the line of cases on which the plaintiff relied — the same line of cases on which UTU relies — were all cases in which one of the parties commenced national bargaining and then later attempted to withdraw. *Soo Line*, 690 F. Supp. at 807. The district court noted that the statutory silence on the issue of national handling, the lack of precedent imposing national handling where one party declines from the outset,

and the treatment of national handling under the NLRA all indicated that national handling should not be imposed. *Id.*

During the pendency of the case in this Court, the United States Court of Appeals for the Eighth Circuit decided the *Soo Line* appeal. *American Railway and Airway Supervisors Association v. Soo Line R.R. Co.*, 1989 U.S. App. Lexis 18953 (8th Cir. Dec. 13, 1989). The Eighth Circuit repeated the district court's observation that no reported decision construes the duty to exert every effort to make and maintain agreements as obligating a railroad to bargain for a national contract through a national bargaining representative, at least where national handling has not yet begun. The court further observed that the union's argument to the contrary ignores the statutory right of each party to designate a representative with whom the other party's representative must negotiate.

## IV.

## Ruling

We find that Defendant C&IM is not required to engage in national handling of the wage and rules proposals in dispute. To hold otherwise would be to add a provision to the RLA that Congress did not see fit to include. That is not the function of this federal trial court.

Plaintiff relies in large part on *Atlantic Coastline* and its progeny, a line of cases decided by the United States Court of Appeals for the District of Columbia Circuit and the United States District Court for the District of Columbia. Those cases state that national handling is obligatory if the practical appropriateness of mass bargaining and the historical experience in handling similar national movements so indicate.

The Court is at once struck by the lack of citation to authority that accompanies these statements in the cases on which Plaintiff relies. The question arises where those courts find the two factors that Plaintiff alleges mandate a finding that national handling is required. Certainly, nothing in the statute requires the Court to look at those two factors. The RLA does not even mention national handling. The only conclusion that can be reached — or at least the conclusion that this Court reaches — is that the courts that decided the cases on which Plaintiff relies made the factors of practical appropriateness and historical experience out of whole cloth. That is something that this Court is unwilling to do. We must respectfully disagree with *Atlantic Coastline* and its progeny.

Our holding is not without support in the case law. The Court has already discussed the holding of *American Railway and Airway Supervisors Association v. Soo Line R.R. Co.*, 1989 U.S. App. Lexis 18953 (8th Cir. Dec. 13, 1989). That case held that a railroad has a statutory right to designate its own representative, that the railroad had no obligation to accept national bargaining, and that the railroad was not bound by national negotiations in which it chose not to participate.

Similarly, in *UTU v. Grand Trunk Western R.R. Co.*, 712 F. Supp. 107 (E.D. Mich. 1989), the court considered a situation in which the plaintiff union sought to compel a railroad to continue to participate in national bargaining as the railroad had in past years. The court held that national handling was not required, at least where the railroad notified the union of its intention to bargain locally before national handling commenced. *Id.* at 111.

Our holding in this case is also backed up by relevant

case law interpreting the National Labor Relations Act. We recognize, of course, that cases decided under the NLRA are not binding precedent for cases decided under the Railway Labor Act. Nor can the NLRA be imported wholesale into the railway labor arena. *Brotherhood of Railroad Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369, 383 (1969). National handling as that term is used with reference to the RLA, however, is similar to multi-employer bargaining under the NLRA. Thus, cases interpreting the NLRA offer helpful instruction.

The NLRA is not interpreted as restricting the rights of employers or their employees to decline to participate in multi-employer bargaining, even where such bargaining has been conducted in the past. *Charles D. Bonanno Linen Service, Inc. v. NLRB*, 454 U.S. 404, 410-12 (1981). Under the NLRA, "[m]utual consent . . . is a basic ingredient necessary to support the appropriateness of a multi-employer bargaining unit." *Andes Fruit Co.*, 124 NLRB. 781. 783 (1959). Thus, under the NLRA, a party may withdraw from a multi-employer bargaining unit at any time up to the start of negotiations. *Publishers' Association of New York City v. NLRB*, 364 F.2d 293 (2d Cir. 1966). Even after bargaining has begun, a party may withdraw if there is mutual consent or unusual circumstances. *Charles D. Bonanno Linen Service, Inc. v. NLRB*, 454 U.S. at 411. We find that these cases support our holding that national handling under the RLA is not mandatory at least where, as here, one party refuses to participate from the outset.

## V.

## Defendant's Counterclaim

In addition to defending against Defendant's motion for summary judgment on its complaint, Defendant has filed

a counterclaim. Defendant's counterclaim asserts that it has the unilateral right to select its representative for the purpose of negotiating the 1988 §6 notices, that it is not required to bargain over its choice of representative, and that the efforts of Plaintiff to force Defendant to give its power of attorney to negotiate to the NRLC violates the terms of the Railway Labor Act. Defendant further asserts that Plaintiff's refusal to bargain with it at the local level violates the terms of the RLA and that Plaintiff should be required to participate in good faith negotiations with C&IM over the terms and conditions of the 1988 §6 notices. We agree with each of Defendant's assertions and summary judgment will be granted in Defendant's favor on its counterclaim.

A.

Selection of Representative

Defendant asserts that it has the unilateral right to select its bargaining representative, that it is not required to bargain over its choice of representative, and that Plaintiff's attempts to force Defendant to give its power of attorney to negotiate to the NRLC are a violation of the Railway Labor Act. Based on the clear wording of the statute we find Defendant to be correct.

Pursuant to §2 Third of the RLA, 45 U.S.C. §152 Third, "[r]epresentatives . . . shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives." This language unequivocally establishes that Defendant has the right to select its own representative and it is not required

to bargain over its choice of a representative. To require Defendant to bargain over its choice of representative would be to run afoul of the statute's mandate that a party be able to choose its own representative without interference or influence from the other party.

Similarly, in order for this Court to grant Plaintiff the relief requested and order Defendant to give its power of attorney to negotiate to the National Railway Labor Conference, we would have to pretend as though 45 U.S.C. §152 Third did not exist. Ordering Defendant to give its power of attorney to the NLRC would be tantamount to aiding Plaintiff in a violation of the Railway Labor Act. This we are unwilling to do.

Plaintiff asserts that it does not intend to interfere with Defendant's choice of representative and Defendant is free to choose any representative it desires. Plaintiff further asserts, however, that Defendant is required to engage in national handling and the only method of engaging in national handling of which Plaintiff is aware is for Defendant to give its power of attorney to negotiate to the NRLC. Thus, Plaintiff asks that the Court order Defendant to give its power of attorney to the NRLC.

Plaintiff's argument reminds us of Henry Ford's statement to the effect that a purchaser of a Model T could have any color he chose — so long as it was black. It hardly needs to be said that a choice of one is no choice at all.

B.

Bargaining at Local Level

Defendant also asserts that Plaintiff's refusal to bargain with it at the local level violates the terms of the RLA and

that Plaintiff should be ordered to participate in good faith negotiations with Defendant over the terms and conditions of the 1988 §6 notices.

It should first be noted that this Court has the power to issue an injunction in this case. The Norris-LaGuardia Act, 29 U.S.C. §§101-115, expresses a basic policy against the injunction of activities of labor unions. The United States Supreme Court has held, however, that the Norris-LaGuardia Act does not deprive federal courts of jurisdiction to enjoin compliance with certain mandates of the RLA. *International Association of Machinists v. Street,* 367 U.S. 740, 772 (1961); *Virginian Rail Co. v. System Federation,* 300 U.S. 515 (1937).

"The heart of the Railway Labor Act is the duty, imposed by §2 First upon management and labor, 'to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes . . . in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.'" *Brotherhood of Railroad Trainmen v. Jacksonville Terminal Co.,* 394 U.S. 369, 377-78 (1969). Section 2 First of the RLA is more than merely a statement of policy or exhortation to the parties. *Chicago & Northwestern Ry. Co. v. United Transportation Union,* 402 U.S. 570, 577 (1970). Congress was not pleading with labor and management to attempt to solve their differences. The words of §2 First create a legal obligation. *Id.* That legal obligation is enforceable by means of an injunction. *Id.*

The only remaining question is whether Plaintiff's refusal to bargain with Defendant at the local level is a violation of the duty to exert every reasonable effort to make and

maintain agreements concerning rates of pay, rules, and working conditions. This question needs little discussion. Clearly, refusing to negotiate is not exerting every reasonable effort to make or maintain an agreement. Plaintiff's refusal to negotiate violates the duty imposed by 45 U.S.C. §152 First.

## VI.

## Conclusion

The Court holds that Defendant is not required to engage in national handling under the Railway Labor Act. To hold otherwise would be to ignore the plain meaning of the statute. We further hold that Defendant has the right to select its bargaining representative without interference or influence from Plaintiff. Finally, we hold that Plaintiff's refusal to negotiate with Defendant is a violation of the duty to exert every reasonable effort to make and maintain agreements. Plaintiff is ordered to begin good faith negotiations with Defendant over the terms and conditions of the 1988 §6 notices.

*Ergo*, for the reasons discussed here, Plaintiff's motion for summary judgment (d/e 7) is DENIED. It is further ordered that Defendant's motion for summary judgment (d/e 4) is ALLOWED. It is further ordered that summary judgment is entered in favor of Defendant on its counterclaim.

ENTER: 2 March, 1990.

FOR THE COURT:
/s/RICHARD MILLS
Richard Mills
United States District Judge

## APPENDIX C

No. 88 C 9607
Hon. Nicholas J. Bua, Presiding
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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UNITED TRANSPORTATION UNION,
*Plaintiff,*

v.

ILLINOIS CENTRAL RAILROAD COMPANY,
*Defendant.*

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### ORDER

Based on an alleged violation of the Railway Labor Act, 45 U.S.C. §151 *et seq.*, plaintiff United Transportation Union ("UTU") requests declaratory and injunctive relief. Specifically, UTU seeks to compel defendant Illinois Central Railroad Company ("Illinois Central") to engage in national collective bargaining. Illinois Central has filed a counterclaim, arguing that UTU is in violation of the Railway Labor Act by refusing to participate in local negotiations. Both parties now move for summary judgment on their respective claims. For the reasons stated herein, this court denies plaintiff's motion for summary judgment and grants defendant's motion for summary judgment.

### I.

### FACTS

UTU is an unincorporated labor organization that represents railroad employees throughout the United States and

Canada. Illinois Central is a major rail carrier which operates in seven states. Its operating employees are represented by UTU.

Since 1983, Illinois Central has significantly decreased the size of its operations; it has reduced its work force by 58%, sold off 19 line segments (the equivalent of approximately 3,500 route miles), and cut its rolling stock of diesel locomotives and freight cars in half. Due to the changing nature of its operations, Illinois Central decided to renegotiate existing labor agreements.

In the railroad industry, collective bargaining takes place on both a national and local level. When negotiations are conducted locally, a single employer bargains with an individual union. In contrast, national collective bargaining (commonly referred to as "national handling") involves multiple employers and unions. Typically, unions and railroads participate in national handling by giving their bargaining authority to a multi-carrier or multi-union bargaining agent. The bargaining agents then negotiate a single national agreement which is binding on all of the parties.

Despite Illinois Central's participation in national handling in the past,[1] it concluded that local negotiations would be more suitable for its current contract proposals. On April 19, 1988, Illinois Central notified UTU of its intention to renegotiate existing labor contracts.[2] At a conference held on May 18, 1988, Illinois Central informed UTU that it would not participate in national handling, and that it

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[1]Illinois Central's national bargaining agent was the National Carriers' Conference Committee of the National Railway Labor Conference, an organization which negotiates national agreements on behalf of railroad carriers.

[2]Pursuant to section 6 of the Railway Labor Act, 45 U.S.C. §156, the party seeking to renegotiate an existing labor agreement must give the other party thirty days written notice of the proposed changes.

intended to negotiate locally. On July 25, 1988, UTU served notice upon Illinois Central of its own contract proposals, and requested a conference within thirty days. A conference was held on August 4, 1988, during which Illinois Central re-emphasized its position against national handling. On October 14, 1988, Illinois Central made counterproposals for concurrent handling of UTU's proposed changes. Once again, Illinois Central expressed its desire to negotiate locally.

Claiming that Illinois Central is obligated to engage in national handling, UTU initiated this lawsuit. Illinois Central filed a counterclaim, seeking to compel UTU to participate in local negotiations. Both sides now claim that they are entitled to summary judgment.

## II.

## DISCUSSION

According to UTU, a party *must* participate in national handling if it would be appropriate to bargain nationally and if there is a history of national bargaining with respect to the disputed issue. *See Brotherhood of R.R. Trainmen v. Atlantic Coast Line R.R.*, 383 F.2d 225, 229 (D.C. Cir. 1967), *cert. denied*, 389 U.S. 1047 (1968). This court disagrees.

Although the Railway Labor Act imposes a duty upon the carrier to negotiate in good faith, *see* 45 U.S.C. §152 First (1982), nothing in the Act suggests that a carrier is obligated to negotiate a national contract through a multi-carrier bargaining representative. Indeed, the Act recog-

nizes each party's right to choose their own bargaining representative. *See* 45 U.S.C. §152 Third, Fourth (1982).[3] As the Supreme Court has long recognized, this freedom of choice is the "essential foundation of the statutory scheme." *Texas & New Orleans R.R. v. Brotherhood of Ry. and Steamship Clerks,* 281 U.S. 548, 569 (1930). Thus, Illinois Central cannot be compelled to designate a multi-carrier representative as its bargaining agent. *American Ry. and Airway Supervisors Ass'n v. Soo Line R.R.,* 891 F.2d 675, 678 (8th Cir. 1989); *United Transp. Union v. Grand Trunk W. R.R.,* 712 F. Supp. 107, 110 (E.D. Mich. 1989); *see also United Transp. Union v. Duluth, Missabe & Iron Range Ry. Co.,* No. 5-88-0178, slip op. at 4 (D. Minn. Dec. 21, 1989).

Notwithstanding Illinois Central's statutory right to select its own bargaining representative, UTU claims that Illinois Central is still obligated to engage in national handling. UTU bases its argument on section 2 of the Railway Labor Act, which states that carriers and unions must "exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions." 45 U.S.C. §152 First (1982). That statutory provision, however, only requires the parties to put forth a good faith attempt to settle disputes. It does not specify the mode of dispute resolution. No court has ever held that a union may unilaterally refuse to negotiate locally and insist that the matter be resolved on a nationwide scale. Several courts,

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[3]Section 2 Third states as follows:

"Representatives . . . shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives." 45 U.S.C. §152 Third (1982). Section 2 Fourth recognizes the employees' right "to organize and bargain collectively through representatives of their own choosing." 45 U.S.C. §152 Fourth (1892).

in fact, have reached the opposite conclusion. *See, e.g., Soo Line*, 891 F.2d at 679-80 (the railroad "has no obligation to accept national bargaining and is not bound by national negotiations in which it chooses not to participate"); *Grand Trunk*, 712 F. Supp. at 111 (union is not free to decline local negotiations and demand national handling); *Railway Labor Executives' Ass'n v. Soo Line R.R.*, No. 4-86-379, slip op. at 23 n.12 (D. Minn. Dec. 24, 1986) ("nothing in the [Railway Labor Act] requires that defendant accede to national handling . . .").[4] National multi-party bargaining is voluntary in nature, requiring the consent of each party. *See Charles D. Bonanno Linen Serv., Inc. v. NLRB*, 454 U.S. 404, 412 (1982).[5] In the absence of mutual consent, this court will not force Illinois Central to bargain on a national level — especially since Illinois Central has remained ready and willing to bargain locally.

Even if this court had the authority to require national handling, UTU has not demonstrated that national handling

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[4]UTU relies on an isolated line of cases emanating from the D.C. Circuit's decision in *Atlantic Coast Line*. *See Delaware and Hudson Ry. Co. v. United Transp. Union*, 450 F.2d 603 (D.C. Cir.), *cert. denied*, 403 U.S. 911 (1971); *United Transp. Union v. Burlington N., Inc.*, 325 F. Supp. 1125 (D.D.C. 1971); *International Ass'n of Machinists and Aerospace Workers v. National Ry. Labor Conference*, 310 F. Supp. 905 (D.D.C. 1970), *appeal dismissed*, 463 F.2d 872 (D.C. Cir. 1972); *Chicago, Burlington & Quincy R.R. v. Railway Employes' Dep't, AFL-CIO*, 301 F. Supp. 603 (D.D.C. 1969). Yet, none of those decisions identify any statutory provision which requires a party to participate in national handling against its will. The court in *International Ass'n of Machinists* conceded this point: "[T]here is no express language in the Railway Labor Act that compels national handling." 310 F. Supp. at 911; *see also Atlantic Coast Line*, 383 F.2d at 229 ("The Railway Labor Act does not universally and categorically compel a party to a dispute to accept national handling over its protest.").

[5]Of course, once a party has consented to national handling, and national negotiations have begun, that party's ability to withdraw from the negotiations may be limited. *Soo Line*, 891 F.2d at 678 (citing *Bonanno Linen*, 454 U.S. at 410-11 & n.5). Before negotiations have commenced, the parties remain free to withdraw from their multi-party bargaining units. *Id.* In the case at bar, Illinois Central has not consented to national handling, and bargaining has not commenced on any level.

is obligatory in this case. Relying on *Atlantic Coast Line* and its progeny, UTU argues that two factors should be considered: (1) the "practical appropriateness" of national handling, and (2) the "historical experience" of national bargaining on the particular issue. *Atlantic Coast Line*, 383 F.2d at 229. This court, however, is not convinced that national handling would be a practically appropriate method of resolving the current dispute. As the court in *Grand Trunk* pointed out, the Staggers Rail Act of 1980 ("Staggers Act") has diminished the practical utility of national handling in certain circumstances. *Grand Trunk*, 712 F. Supp. at 111-12. Prior to the enactment of the Staggers Act, railroads could increase their freight rates collectively. *Id.* at 111. After the Staggers Act went into effect, railroads were required to set their rates individually in order to foster a more competitive environment. *See* 49 U.S.C. §10101a (Supp. 1989); *Grand Trunk*, 712 F. Supp. at 112; *see also* Affidavit of Robert G. Richter, at 3, ¶4. To maintain this competitive environment, carriers need greater freedom to determine their own cost structures, especially labor costs. *Grand Trunk*, 712 F. Supp. at 112 (citing H.R. Rep. No. 96-1035, 96th Cong., 2d Sess. 42-43, 119-21 (1980)). If railroads could be compelled to participate in national negotiations, they would lose much of this freedom. The ability to freely engage in local negotiations is perhaps even more important to a railroad such as Illinois Central, which seeks to obtain labor agreements that are more con-

sistent with its current railroad operations. *See* Affidavit of Robert G. Richter, at 2, ¶3.[6]

Of the 11 unions that Illinois Central must bargain with, UTU is the only one which refuses to participate in local negotiations. UTU has a duty to negotiate with Illinois Central directly, and that duty cannot be avoided by demanding national handling.

## III.

## CONCLUSION

For the foregoing reasons, this court denies plaintiff's motion for summary judgment and grants defendant's motion for summary judgment. Plaintiff is hereby ordered to negotiate with defendant's rightfully chosen representative on a local basis with respect to all outstanding contract proposals.

IT IS SO ORDERED.

Dated: February 26, 1990

/s/ NICHOLAS J. BUA
Nicholas J. Bua
Judge, United States District Court

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[6]Moreover, the other factor set forth in *Atlantic Coast Line* — *i.e.*, whether the particular issues have been historically resolved on a national basis — is not a particularly compelling reason to require national handling in the instant case. As circumstances change over time (*e.g.*, the deregulation of the railroad industry or the restructuring of a particular railroad), the method of dispute resolution used in the past becomes less relevant in deciding how similar labor issues should be handled in the future. Unions and carriers may be discouraged from participating in national handling in the first place if such participation could conceivably obligate them to engage in national handling in the future. *American Ry. and Airway Supervisors Ass'n v. Soo Line R.R.*, 690 F. Supp. 802, 807 n.8 (D. Minn. 1988), *aff'd*, 891 F.2d 675 (8th Cir. 1989); *see also Railway Labor Executives' Ass'n*, No. 4-86-379, slip op. at 22-23.

## APPENDIX D

Civil File No. 5-88-0178
UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FIFTH DIVISION

United Transportation Union,

*Plaintiff,*

v.

Duluth, Missabe & Iron Range Railway Company,

*Defendant.*

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MEMORANDUM AND ORDER

Richard A. Williams, Jr., Esq., Hvass, Weisman and King, 100 S. 5th Street, Suite 2100, Minneapolis, MN 55402 and Clinton J. Miller, III, Esq., Assistant General Counsel, United Transportation Union, 14600 Detroit Avenue, Cleveland, Ohio 44107-4250, for plaintiff.

Roger R. Roe, Jr., Esq., Rider, Bennett, Egan and Arundel, 2500 1st Bank Place West, Minneapolis, MN 55402, and Jeffrey S. Berlin, Esq., Richardson, Berlin and Morvillo, 2300 N Street, N.W., Suite 625, Washington, D.C. 20037, for defendant.

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This matter is before the court upon the parties' cross motions for summary judgment. For the reasons set forth below, the plaintiff's motions are DENIED and the defendant's motion is GRANTED.

## FACTS

This is a railroad labor dispute. In Count I, plaintiff seeks a declaratory order that defendant is violating the Railway Labor Act ("RLA") "status quo" provision by refusing to submit to national, multiple employer bargaining (national handling) with plaintiff over certain wage and work-rule issues. In Count II, plaintiff seeks an injunction ordering defendant to submit to national handling. In its counterclaim, defendant seeks a declaratory order that plaintiff's action violates its RLA right to self-representation and an injunction requiring plaintiff to bargain locally.

Defendant Duluth, Missabe and Iron Range Railway Company operates 581 miles of track in northeastern Minnesota and northwestern Wisconsin. Virtually all of its business consists of hauling iron ore to several Minnesota processing plants. Plaintiff United Transportation Union is a national union which represents several classes of defendant's employees.

For the past twenty years, plaintiff and defendant have engaged in national multi-employer bargaining over wages and work rules, defendant being represented by the National Carriers' Conference Committee (NCCC). The currently effective national wages and work rules agreement is dated October 31, 1985, and contained a moratorium on the service of new bargaining proposals relating to the subject matter of the agreement until April 1, 1988.

On January 16, 1987, defendant informally notified plaintiff that it intended to negotiate locally, not nationally. The parties subsequently exchanged section 6 notices under the RLA, 45 U.S.C. § 156, regarding proposed changes in their collective bargaining agreement. Following the failure to agree on the national handling issue, plaintiff brought this action. Defendant has not submitted to national handling.

## DISCUSSION

The operative facts recited above are not in dispute. Under Fed. R. Civ. P. 56, consequently, the court is free to determine which party is entitled to judgment as a matter of law.

Both counts of plaintiff's action depend on *Brotherhood of R.R. Trainmen v. Atlantic Coast Line R.R.*, 383 F.2d 225 (D.C. Cir. 1967), *cert. denied*, 389 U.S. 1047 (1968) and its progeny. *Atlantic Coastline* held that a party was not obligated to submit to national handling, but contains language suggesting that in certain circumstances the "status quo" provision of the RLA, 45 U.S.C. § 152 First, mandates national handling. The RLA also, however, provides each party the freedom to select its own bargaining representative. 45 U.S.C. § 152 Third. The issue is thus which of these two positions applies here. The Eighth Circuit has squarely addressed this issue in *American Railway and Airway Supervisors Association v. Soo Line Railroad Co.*, — F.2d. — , 1989 WL 149752, slip op. of Chief Judge Lay (8th Cir. Dec. 13, 1989). Refusing to apply *Atlantic Coast Line*, the *Soo Line* Court held: "Because a new round of national bargaining had not yet begun when Soo announced its intention to bargain locally, nothing prevents it from withdrawing from its national negotiating coalition." Slip op. at 8. The *Soo Line* also held:

> We also cannot accept the union's argument that the railroad must serve section 6 notice of its intent to withdraw from national bargaining, and that it first must bargain over this "change." The selection of a bargaining agent is not a subject of mandatory bargaining under the Act. Nor is it a term in any existing agreement. It is a right reserved to the parties by the Act.

*Id.*

Accordingly, plaintiff's action must fail as a matter of law.

The remaining issue is defendant's counterclaim for declaratory and injunctive relief that plaintiff has violated its duty to negotiate in good faith under the RLA, 45 U.S.C. § 152 First. Plaintiff cannot rely on its mistaken premise of law in refusing to bargain with defendant's chosen representative. *E.g., Brotherhood of Railroad Trainmen v. Akron and Barberton Belt R.R.*, 385 F.2d 581, 597-98 (D.C. Cir. 1967), *cert. denied*, 390 U.S. 923 (1968). As the *Soo Line* court noted, "Correlative to this right [to bargain locally], the railroad does have a duty to bargain with the representative or representatives so designated by the unions; it must bargain in good faith as to the terms and conditions of health and welfare coverage of the various employees represented by the union representatives." Slip op. at 10. Here, conversely, the union has a duty to bargain with the railroad's rightfully chosen representative.

Accordingly, IT IS ORDERED that:

1. Defendant's motion for summary judgment on plaintiff's claims is GRANTED, and plaintiff's motion DENIED.

2. Defendant's motion for summary judgment on its counter claim is GRANTED. The court finds that plaintiff must, pursuant to its duty to bargain in good faith, negotiate with defendant's chosen representative.

Dated: December 21, 1989.

/s/ PAUL A. MAGNUSON
Paul A. Magnuson
United States District Court Judge

## APPENDIX E

Statutes Relied Upon:

I. Railway Labor Act, 45 U.S.C. § 151, *et seq.* (Excerpts)

A. Section 151 Sixth.

> The term "representative" means any person or persons, labor union, organization or corporation designated either by a carrier or group of carriers or by its or their employees, to act for it or them.

B. Section 152 First.

> It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

C. Section 152 Second.

> All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

D. Section 152 Third.

> Representatives, for the purposes of this chapter, shall be designated by the respective parties without interference, influence, or coercion by either party

over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives. Representatives of employees for the purposes of this chapter need not be persons in the employ of the carrier, and no carrier shall, by interference, influence, or coercion seek in any manner to prevent the designation by its employees as their representatives of those who or which are not employees of the carrier.

E. Section 156.

Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon as required by section 155 of this title, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board.